IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 583 OF 1997

The State of Maharashtra..... ....Appellants.
(Orig.Complt..)

V/s

1. Ramrao @ Baban Dadaso Ghorpade
2. Sarjerao Dadaso Ghorpade... .... Respondents.
(Orig.Accd.Nos.1 & 2)

Mr.A. S.Shitole, APP for the State.

Mr.Niteen Pradhan with Ms.S.D.Khot and S.S. Pednekar, Adv. for the respondents.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

30th June, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned II Additional Sessions Judge, Kolhapur in Sessions Case No.71 of 1991 on 31.12.1996 the State has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor and the learned

Advocate for the respondents we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution case as it emerges from the evidence on record is that on 24.10.1988 around noon the accused persons allegedly assaulted the victim Shamrao Dalvi. The assault took place due to long standing enmity over agricultural lands. The land belonged to one Anandrao Ghatage who was cultivating it with the help of victim Shamrao and therefore he was assaulted by the accused persons. The prosecution has examined 12 witnesses to prove its case. The learned trial Judge on appreciation of evidence and careful scrutiny thereof came to the conclusion that the prosecution has failed to prove involvement of the accused in the homicidal death of Shamrao and therefore proceeded to acquit all the accused persons. Feeling aggrieved by it as aforesaid appeal is filed by the State. P.W.1-Sanjay Dalvi is related to the owner and has lodged the complaint. He narrates the entire history of the dispute and the manner in which the assault took place, how the accused came, how they assaulted, how they were armed is out stated. In his deposition he mentions that the assault was witnessed by Vijay.

4. P.W.2-Balasaheb Dalvi is hostile. P.W.3 is Bhagwan Yadav. P.W.4-Vijay Dalvi is brother of P.W.1-Sanjay. He claims that he is eye witness and he saw the assault from a distance of 300 feet. In cross examination he admits that he

is short of hearing and yet claims to have heard the shouts and ran towards Shamrao. He does not mention P.W.1-Sanjay as a person being on the spot. His cross examination reveals several lacunae in his statement and it becomes difficult to believe the witness without corroboration. P.W.5-Tanaji Patil has turned hostile. He was supposed to have heard the extra judicial confession given by the accused. It is however pertinent to note that this witness after he was declared hostile was cross examined by the prosecution and was also cross examined by the Advocate for the accused and he has stated in his cross examination by the accused that he had given his statement from which he resiled because he was threatened by the police to do so. This statement on behalf of the witness Tanaji therefore raises doubt regarding entire investigation. In any event, his testimony is of no use. P.W.6-Anand Ghatage is owner of the land. He is not an eye witness but he admits the relationship with witness and his other relatives. He admits that the relations of the complainant party and of the accused party were strained because a graphic description of what transpired at the assault. This description matches description given by P.W.1-Sanjay. He also takes care to mention presence of P.Ws. 1 and 4. P.W.7-Dilip Dalvi mentions the presence of Vasant also. This Vasant is examined as P.W.8. According to him when he came on the spot he saw the accused running away and yet he gives complete description of the weapons which the accused had. He also deposes about the earlier dispute over the land and mentions only the

presence of P.W.4-Vijay. In the strict sense he is not an eye witness to the assault but he is witness who had seen the accused running and has given the description of the arms which the accused had. P.W.9-Appaso Matsagar is declared hostile. He was supposed to prove the recovery made by the police in his presence. P.W.10-Gajanana Desai is the police official who recorded the First Information Report. P.W.11-Digambar Kulkarni is the doctor who proved homicidal death and P.W.12-Pandurang Powar is the investigating officer.

5. From the above evidence it will be seen that the incident in its entirety was seen by P.Ws.1, 4 and 7 and when P.W.8 arrived at the scene of offence the accused were running away with arms. Each of the eye witness is specific about weapons which the accused had. They ascribe specific role to the accused and yet the police have not recovered any of the weapons. One of the eye witness claims to be little deaf yet he heard almost everything, noticed the incident at a distance of 300 feet and yet describes what role was played by all the accused and what weapon was used by that accused. A careful scrutiny of this eye witness will show that they depose as if they have memorized whole thing. They are deposing after years of assault and yet their description is graphic and a little more similar than can be found natural. Each of them describes the weapon which was used by each of the accused. There is no confusion, there is no mistake and the depositions are uniform. Such uniformity after years of seeing the incident in deposition creates a reasonable doubt as regards concoction of

the entire story by the complainant and its party together with the result that when they were called to depose about the assault which had taken place years ago they give the predecided description of what according to them should be told to the Court. Their deposition in the circumstances does not inspire confidence. These are our reasons for agreeing with the order of acquittal. The learned trial Judge has given his own reasons and we are giving the above reasons in addition to those reasons. We confirm the findings and reasoning given by the learned trial Judge for coming to those findings. We see no reason to interfere with the order of acquittal as it is well reasoned and therefore we dismiss the appeal as without any substance.